

KUSM-TV/MontanaPBS Video Production Contract # 28035

Montana Department of Corrections "Today's Corrections"

Agreement made this 28th day of May, 2008, by and between Montana Department of Corrections (MDOC), located in Helena, MT (hereafter "Client") and

KUSM-TV
VCB 183
Montana State University
Bozeman, MT 59717 (hereafter "KUSM").

WHEREAS Client has a concept for a video production intended to inform Montanans about the nature of Montana's corrections system and the programs and services it provides, and

WHEREAS Client has funds available for production, and

WHEREAS Client desires to engage KUSM to produce and deliver "Today's Corrections," pursuant to the terms and conditions set forth herein;

NOW, THEREFORE, the parties agree as follows:

1. Description of the Project

KUSM will produce a DVD, consisting of seven "chapters" totaling approximately 40 minutes in length, tentatively referred to as "Today's Corrections." The initial chapter, approximately 10 minutes in length, would consist of an overview of the corrections system. Five chapters, each about 5 minutes in length, will focus on specific areas within corrections: secure care, alternatives to prison, community corrections, youth services and correctional enterprises. The seventh chapter, also approximately 5 minutes in length, will incorporate employee testimonials/interviews into an employee recruitment tool. The project also includes three (3), 30-second recruitment commercials [utilizing corrections employees] for use on television. The production will incorporate statistical information in such a way as to allow updates to be easily edited into the product so the DVD remains timely and relevant for at least five years. Such updates are not included in this contract. This multi-chapter DVD and recruitment commercials will hereinafter be referred to collectively as "the Project."

The Project is not intended for broadcast on Montana PBS, but will be produced in compliance with broadcast technical standards and will be suitable for broadcast.

The Project will be based on scripts supplied by MDOC through a collaboration between KUSM staff and Client staff. Bob Anez will serve as the primary contact for the Project and as representative on behalf of Client. Michael Ballard will serve as the Producer in charge of the Project.

KUSM will provide Client with 250 DVDs of the finished project and a copy of each of the three (3) commercials, each on a separate DVCPRO videotape.

2. Project Schedule and Deliverables

Delivery Item: Script Outline and initial filming schedule
Delivery Date: 6/25/08

Delivery Item: Initial script and initial film footage review

Delivery Date: 10/1/08

Delivery Item: Filming completed

Delivery Date: 11/30/08

Delivery Item: Rough-cut project review

Delivery Date: 3/31/09

Delivery Item: Final version of project completed

Delivery Date: 6/1/09

KUSM will use all reasonable efforts to conform to this schedule and any revisions to the schedule, as approved by Client.

3. Approvals

Once Client receives materials described in Section 2 of this agreement, Client will use reasonable efforts to review the materials immediately and either:

3.1 Approve the materials, thereby enabling KUSM to proceed to the next scheduled phase; or

3.2 Request specific changes and corrections, in writing, that will permit the Project to proceed to the next scheduled phase once KUSM has made the requested changes and corrections; or

3.3 Reject the materials and terminate the Project.

All approvals related to the materials delivered in the various phases will be made [in writing] in a letter addressed to the Project producer at KUSM's offices.

If KUSM does not receive a response from Client within 10 working days of Client's receipt of the materials, the materials will be deemed approved.

Client shall be the sole judge as to whether the Project materials are satisfactory and Client shall have the sole and exclusive right to reject the materials and terminate this agreement.

However, if Client exercises the option described in section 3.3 and terminates the Project, or if Client terminates the Project for any reason other than gross breach of contract, KUSM is entitled to a \$1,000 fee, plus reimbursement of all expenses related to the Project that have been incurred or committed at the date of termination.

Should Client wish to make changes to the materials completed in a particular phase after Client has approved the materials, such changes will be made at Client's sole expense. KUSM will provide cost projections for such changes.

4. Consideration

4.1 For producing the Project and delivering the materials described in sections 1 and 2 of this agreement, Client will pay KUSM the total sum of \$50,000, billable in two payments. Half will be billed and due upon signing of this contract and delivery of the items containing a June 25, 2008 deadline, as outlined in Section 2 of this contract. The final payment will be upon completion of the project.

4.2 KUSM will submit an invoice to Client for each payment, and Client will issue payment within ten working days of its receipt of each invoice. None of these payments are refundable in whole or in part.

4.3 Any payment for additional work performed on the Project at the request of Client will be paid in a single, lump sum due upon the completion and delivery of such work.

4.4 General budget breakout is as follows:

Pre-production -- \$8,514

Production -- \$17,049

Post-production -- \$17,567

Administration -- \$6,470

5. Ownership of Materials and Copyright

Ownership and copyright of the finished Project, and all original materials created specifically for the Project, excluding ownership of materials licensed for use in the Project by third parties, will be held by the Department of Corrections. KUSM-TV/MontanaPBS and Montana State University would have authority to use video footage created for this Project in other projects undertaken by KUSM.

For their part, KUSM retains, in-perpetuity, the right to use any or all materials in other productions or promotional projects, whether for broadcast or non-broadcast purposes.

Client and its successors, licensees, and assigns shall have the right to promote, distribute, display, license for broadcast, or sell home-viewing versions of the Project, so long as the activities undertaken shall in no way interfere with, or limit, the above rights of KUSM.

6. KUSM's Warranties

KUSM warrants that neither the Project nor any materials furnished or selected by KUSM will violate any law or infringe upon or violate the rights of any person or entity.

In the event that KUSM incorporates into the Project any materials that are protected by copyright, KUSM will notify Client of such protections, and will present for approval to Client and its counsel releases, permissions or other evidence of the right to use for the protected materials. Likewise, Client will provide such releases, permissions or other evidence of the right to use for any materials provided by Client to KUSM for inclusion in the Project.

KUSM will be responsible for obtaining all written waivers from offenders or their parent/guardian for use of offenders' identifiable images in the finished Project.

KUSM further represents, warrants and covenants that it has all necessary rights and power to enter into and fully perform this agreement and that its product will be free of liens, claims or encumbrances whatsoever in favor of any other party.

7. Indemnification

KUSM agrees to indemnify Client at all times and hold it harmless from and against any and all claims, damages, liabilities, costs and expenses, including legal expenses and reasonable counsel fees arising out of 1) the use by Client of any material produced by KUSM under this agreement; or 2) any breach by KUSM of any representation, warranty, or covenant made by KUSM in this Agreement. In the event that Client receives notice of any claim or service of process involving the foregoing indemnification, Client shall promptly notify KUSM thereof.

KUSM will promptly adjust, settle, defend, or otherwise dispose of such claim at KUSM's sole cost. If KUSM has been so notified and does not diligently pursue such matter, Client may take such action on its own behalf to adjust, settle, defend or otherwise dispose of such claim. In this event, KUSM shall, upon being billed therefore, reimburse Client in the amount thereof.

Client agrees to indemnify KUSM at all times and hold it harmless from and against any and all claims, damages, liabilities, costs and expenses, including legal expenses and reasonable counsel fees arising out of 1) the use by KUSM of any material provided to KUSM by Client; or 2) any breach by Client of any representation, warranty, or covenant made by Client in this Agreement. In the event that KUSM receives notice of any claim or service of process involving the foregoing indemnification, KUSM shall promptly notify Client thereof. Client will promptly adjust, settle, defend, or otherwise dispose of such claim at Client's sole cost. If Client has been so notified and does not diligently pursue such matter, KUSM may take such action on its own behalf to adjust, settle, defend or otherwise dispose of such claim. In this event, Client shall, upon being billed therefore, reimburse KUSM in the amount thereof.

8. No Obligation to Publish

Nothing in this agreement shall be deemed to obligate Client to publish, distribute or exhibit the Project. KUSM agrees that, upon payment of the compensation described in section 4 above, Client shall have fully performed its obligations under this agreement.

9. Independent Contractor Status

Nothing in this agreement shall be construed as making Client and KUSM partners or making either entity an employee of the other.

10. Right of First Refusal

KUSM will retain a Right of First Refusal to serve as producers of any sequel to, or spin-off from, the Project. Client and KUSM will negotiate in good faith with respect to such engagement. If the parties are unable to reach an agreement, Client will be free to negotiate with a third party with respect thereto, provided, however, that prior to entering into any such third party agreement, Client will notify KUSM in writing of the terms of such agreement. KUSM will have 30 days from receipt of such notice to accept the engagement as producer on the terms set forth therein. If KUSM fails to accept such offer, Client will be free to enter into the third-party agreement, but only on the terms set forth in the notice.

11. Force Majeure

If KUSM or Client fail to perform any obligation hereunder due to unavailability of services or materials, labor disputes, governmental restrictions, or any other circumstances beyond their control, such failure shall not be deemed a breach of this Agreement, and if any time period for the performance is specified, such period shall be deemed extended accordingly.

12. Miscellaneous Provisions

12.1 Applicable Law. This agreement shall be construed in accordance with the laws of the State of Montana.

12.2 Modification, Waiver or Change. No modifications, waiver or change shall be made in the terms and conditions of this agreement, except as may be mutually agreed upon in writing by all parties hereto.

12.3 Successors and Assigns. This agreement shall inure to the benefit of and be binding upon the successors and assigns of each of the parties hereto

12.4 Entire Understanding. This agreement, together with all exhibits attached hereto, if any, represent the entire understanding of the parties, and neither party is relying upon any representation not contained herein.

12.5 Severability. In the event that any provision of this agreement shall be deemed invalid, unreasonable, or unenforceable by any court of competent jurisdiction, such provision shall be stricken from the agreement or modified so as to render it reasonable, and the remaining provisions of this agreement or the modified provision as provided above, shall continue in full force and effect and be binding upon the parties so long as such remaining or modified provisions reflect the intent of the parties at the date of this agreement.

12.6 Notices. Any and all notices and written approvals required to be given under this agreement shall be deemed to be made if they are mailed postage prepaid by certified mail, return receipt requested, to the party at the respective address set forth above, or at such address as may from time to time be designated by the party as a change of address. Any notice period shall begin running as of the date provided on the return receipt.

12.7 Marginal Headings. The marginal headings used in this agreement are for convenience only and shall not be deemed to be a binding portion of the agreement.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals the day and year first above written.

In the presence of:


Mike Ferriter, Director
Montana Department of Corrections


Michael Ballard
Producer, KUSM-TV

 5/28/08
Legal Counsel
Montana Department of Corrections

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